PRINTED COPY

(2)

FILED
MAY 28 1993
OFFICE OF THE CLERK

No. 93-413

In The

Supreme Court of the United States

October Term, 1993

ALLIE D. LOCKRIDGE,

Petitioner,

v.

A. KAMBOURIS, M.D., Individually and as a Michigan Medical doctor, SISTERS OF MERCY CORPORATION, a Michigan profit corporation, doing business under assumed name of MOUNT CARMEL MERCY HOSPITAL and MEDICAL CENTER OF DETROIT, CRITTENTON HOSPITAL INCORPORATED,

Respondents.

On Petition For Writ Of Certiorari
To The Michigan Supreme Court

RESPONDENT CRITTENTON HOSPITAL INCORPORATED'S REPLY TO PETITION FOR WRIT OF CERTIORARI

ROSEMARIE FLAHERTY (P34682)
Attorney for Respondent
Crittenton Hospital Incorporated
2301 W. Big Beaver, Ste. 950
Troy, MI 48084
(313) 649-6696

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

21 pp

STATEMENT OF QUESTIONS PRESENTED

Whether Petitioner's Petition for Writ of Certiorari should be denied when the trial court granted Respondent's Motion for Summary Disposition on the issue of the running of the Statute of Limitations?

Respondent contends, "Yes".

TABLE OF CONTENTS

Page

Statement of Questions Presented i

Index of Authorities iii

Constitutional Provisions 1

Statement of the Case 2

Argument 2

I. THE STATUTE OF LIMITATIONS HAS EXPIRED 2

II. THE STATE COURT OF LAST RESORT HAS NOT DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT 3

III. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW AT ISSUE 4

Conclusion 6

TABLE OF AUTHORITIES

Page

CASES

Kermizian v. Sumcad, 470 N.W.2d 500, 188 Mich. App. 690 (1991) 2

STATUTES AND COURT RULES

MCL 600.5805(4) 2

MCL 600.5838a(3) 2

Rule 10 of the United States Supreme Court Rules 3

OTHER AUTHORITIES

United States Constitution Article 3, Section 2 .....4, 5

CONSTITUTIONAL PROVISIONS

ARTICLE 3

Section 2. The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

STATEMENT OF THE CASE

Petitioner alleges that she was the victim of Respondent's medical malpractice in 1973. She contends she was not aware of the alleged malpractice until 1988. However, Petitioner attempted to retain counsel to investigate her claim in September, 1973. Therefore, Petitioner *was* aware of the alleged medical malpractice in September, 1973.

In February, 1990, the District Court entered an Order dismissing Petitioner's case, as the Statute of Limitations for medical malpractice had expired. Subsequently, in July, 1991, Petitioner's application for delayed appeal was denied. Furthermore, leave to appeal was denied in the Michigan Supreme Court.

ARGUMENT

I. THE STATUTE OF LIMITATIONS HAS EXPIRED.

MCL 600.5805(4) provides that the period of limitations is two years for an action charging malpractice. Additionally, pursuant to MCL 600.5838a(3), an action may be commenced within six months after the plaintiff discovers or should have discovered the existence of the claim. The burden that plaintiff neither discovered nor should have discovered the existence of the claim within the six month period is on the plaintiff.

The Court in *Kermizian v. Sumcad*, 470 NW2d 500, 503; 188 Mich. App. 690, 694 (1991), a medical malpractice case, determined:

> The discovery rule does not require that a plaintiff know with certainty that the defendant committed malpractice before the six-month discovery period begins to run. All that is required is that the plaintiff know of the act or omission of the defendant and have to believe that the medical treatment was improper or was performed in an improper manner.

In the instant case, Petitioner alleges she was the victim of Respondent's medical malpractice in 1973. Petitioner contends she was not aware of this medical malpractice until January, 1988. (Appendix #1, Petitioner's Complaint, paragraph #7).

However, in September, 1973, Petitioner retained legal counsel to pursue her medical malpractice claim. (Appendix #2). Therefore, Petitioner *was* aware of the alleged medical malpractice in 1973 and she should have initiated her lawsuit at ~~that time~~. The Statute of Limitations for Petitioner's medical malpractice action has clearly expired, as the alleged malpractice occurred 16 years prior to filing the lawsuit. (Appendix #3, Respondent's Answer to Petitioner's Application for Leave to Appeal, paragraph #3).

II. THE STATE COURT OF LAST RESORT HAS NOT DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT.

Rule 10 of the United States Supreme Court Rules provides that a consideration for determining whether to grant a Petition for Writ of Certiorari is if the State Court of Last Resort has decided a federal question in a way

that conflicts with the decision of another State Court of Last Resort.

In the case at bar, the State Court of Last Resort, the Michigan Supreme Court, did not grant Petitioner's Leave to Appeal. (Appendix #4). Therefore, it would not even hear the Petitioner's claim. Additionally, it is noteworthy that the Petitioner's lawsuit was summarily dismissed in the Trial Court (Appendix #5) and further leave to appeal was denied in the Court of Appeals for lack of merit on the grounds presented. (Appendix #6, Respondent's Answer to Petitioner's Application for Leave to Appeal, paragraph #8).

In summary, the procedural history of this case clearly illustrates that the Statute of Limitations has expired. Therefore, Respondent respectfully requests this Honorable Court deny Petitioner's Petition for Writ of Certiorari.

III. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW AT ISSUE.

Article 3, Section 2 of the United States Constitution provides:

> The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all cases affecting Ambassadors, or public Ministers and Counsuls; – to all Cases of Admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of

> another State; – between Citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> In all Cases affecting Ambassadors, other public Ministers and counsels, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.
>
> The trial of all Crimes, except in Cases of Impeachment shall be by jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

In the instant case, the Petitioner brings a cause of action against Respondent for medical malpractice. This matter is a case of negligence and has been adequately resolved in the state courts. Furthermore, the instances in which the United States Supreme Court shall have appellate jurisdiction, as provided in Article 3, Section 2 of the United States Constitution, *supra*, are not present in the case at bar. Therefore, it is not necessary to appeal this matter to the United States Supreme Court.

CONCLUSION

The procedural history of Petitioner's case illustrates that the Statute of Limitations clearly bars Petitioner's cause of action. Additionally, the United States Supreme Court does not have jurisdiction over this medical malpractice case, as there is no conflict with other State Supreme Court decisions and there is no important federal question at issue. Therefore, in light of the foregoing reasons, Respondent respectfully requests this Honorable Court to deny Petitioner's Petition for Writ of Certiorari.

NOESKE, TARNAVSKY AND BLANCO

ROSEMARIE FLAHERTY (P34682)
Attorney for Respondent
Crittenton Hospital, Incorporated

APPENDIX 1

* * *

3. That the Defendant, A. KAMBOURIS, M.D. is an individual person licensed to practice medicine in the State of Michigan and subject to the jurisdiction of this Court and amenable to legal process by this Court.

4. That the Defendant, CRITTENTON HOSPITAL, Incorporated is a Non-Profit Corporation presently doing business in the City of Rochester County of Oakland, STATE OF MICHIGAN and subject to the jurisdiction of the Court and amenable to legal process of law by this Court.

5. That this "case and controversy" involves valid legal claims by this Plaintiff, -ALLIE LOCKRIDGE- for compensatory damages for medical malpractice claims which this Plaintiff, ALLIE LOCKRIDGE, has against these Defendants arising out of tortious medical treatment and services rendered by these Defendants in 1973, for which Plaintiff is now entitled to compensatory damages.

6. That this "case and controversy" involves claims which are in excess of Ten Thousand ($10,000.00) Dollars or more and this Court is a proper Court having "subject matter jurisdiction" to hear, litigate, adjudicate this civil action between these parties.

7. That this "case and controversy" is not time-barred by the Michigan Statute of Limitations statute, M.C.L.A. 600.5805; M.S.A. 27A.5805 – because this Plaintiff *did not discover* the medical malpractice committed by these Defendants, until January of 1988 at which time this

Plaintiff filed a civil action in the U.S. District Court under Civil Action #88-0482 tolling the running of the Statute of Limitations according to M.C.LA. 600.5856.

8. Plaintiff, ALLIE LOCKRIDGE, further asserts that she is rightfully entitled to maintain this civil action for Medical Malpractice against these Defendant(s), because these Defendant(s) fraudulently concealed the fact that they had committed medical malpractice upon this Plaintiff, ALLIE LOCKRIDGE, in 1973 and Plaintiff, ALLIE LOCKRIDGE did not discover the medical malpractice until January, of 1988 and she is thus entitled to the benefit of the Michigan statute, M.C.L.A. 600.5855 in respect to the "tolling" of the Michigan Statute of Limitations as prescribed by M.C.L.A. 600.5805.

* * *

APPENDIX 2

LAW OFFICES

Charfoos and Charfoos
A PROFESSIONAL CORPORATION
838 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226

963-8080

SAMUEL CHARFOOS
LAWRENCE S. CHARFOOS
MYRON B. CHARFOOS
DAVID F. DICKINSON
RONALD R. GILBERT
DAVID W. CHRISTENSEN

Oakland County Office
19111 West Ten Mile Bldg.
Southfield, Michigan Illegible
Illegible
Of Counsel
ALAN A. MAY

September 17, 1973

Crittenton Hospital
1554 Woodrow Wilson
Detroit, Michigan

Re: Allie Lockridge

Birthdate: 9-19-35

Treated From: 4-8-73 and 6-4-73

To: 4-21-73 and 6-19-73

Enclosed is a medical authorization signed by the above person and a self-addressed, stamped envelope for your reply.

Please send us your medical report regarding treatment rendered to the above person during the above dates indicating therein your diagnosis, treatment and prognosis of the conditions treated. Also, please include an *itemized statement of* your billing for services rendered.

Please feel free to bill us for this information.

Sincerely yours,

/s/ David W. Christensen
DAVID W. CHRISTENSEN

LAW OFFICES

Charfoos and Charfoos
SUITE 939 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226

WOodward 3-8080

TO WHOM IT MAY CONCERN:

This is your authority to allow my attorneys, Charfoos and Charfoos, or their representative, to examine any and all records you may have in regard to the treatment and/or confinement of

ALLIE LOCKRIDGE
4-8-73 4-21-73
from 6-4-73 to 6-19-73

Name /s/ Allie Lockridge
Address 14662 Northlawn, Detroit, Mich. 48238
Birthdate September 19, 1935

Subscribed and sworn to before me this
17th day of September 1973
/s/ Dennis Holly
Notary Public Wayne County
My commission expires 1-24-76

APPENDIX 3

* * *

2. A Motion for Summary Disposition was filed in this Circuit Court by this Defendant based upon the appropriate Statute of Limitations for medical malpractice cases. The Statute provides that a cause of action for medical malpractice must be filed within two years of the date of the malpractice; MCLA 600.5805(4).

3. The alleged malpractice occurred 16 years prior to filing the lawsuit.

4. The Statute allowed that a malpractice action could be brought within two years of the date of the discovery of the medical malpractice. Discovery in this case was prior to September of 1973, inasmuch as the Plaintiff retained a law firm to pursue her malpractice case prior to September of 1973. The hospital chart contains a letter received from David Christenson requesting a copy of the medical charts on behalf of his client, ALLIE LOCKRIDGE, Plaintiff-Appellant. Not only did the Plaintiff discovery [sic] what she believed to have been medical malpractice, but she retained a law firm to represent her.

5. The Trial Court, Claudia Morcom, granted Defendant's Motion for Summary Disposition after a thorough review of the file and oral arguments.

6. The Motion for Summary Disposition was granted on February 9, 1990. Fifteen months after the final order was entered in the Trial Court, Plaintiff-Appellant filed an Application for Appeal with the Court of Appeals.

7. That MCR 7.101(B) provides that appeal of right must be taken within 21 days after the entry of the Order of Judgment appealed from.

8. That the Court of Appeals, on July 8, 1991, ordered that the Application for delayed appeal was denied for lack of

* * *

APPENDIX 4

Michigan Supreme Court
Lansing, Michigan

Order

Entered: February 28, 1992

Michael F. Cavanaugh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

92058

ALLIE LOCKRIDGE,
Plaintiff-Appellant,

v

A. KAMBOURIS, M.D., Individually and as a Michigan Medical Doctor: SISTERS OF MERCY CORPORATION, a Michigan Profit Corporation, doing business under Assume [sic] Name of MOUNT CARMEL MERCY HOSPITAL and MEDICAL CENTER OF DETROIT; CRITTENDON HOSPITAL INCORPORATED, a Non-Profit Corporation,

Defendants-Appellees.

SC: 92058
COA: 139866
~~LC: 89-92973-NH~~
LC: 89-925730-NH

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

90225

[seal] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 28, 1992 /s/ Jacqueline B. MacKinnon

APPENDIX 5

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ALLIE LOCKRIDGE,
Plaintiff,

vs.

A. KAMBOURIS, M.D., Individually and as a Michigan Medical Doctor, SISTERS OF MERCY HEALTH CORPORATION, a Michigan Profit Corporation, doing business under the Assumed Name of MOUNT CARMEL MERCY HOSPITAL and MEDICAL CENTER OF DETROIT, CRITTENTON HOSPITAL INCORPORATED, a Non-Profit Michigan Corporation, Jointly and Severally.

Defendants.
_____/

89-925730 NH
10/13/89
JDG: CLAUDIA
HOUSE MORCOM
LOCKRIDGE, ALLIE
VS
KAMBOURIS A MD

ALLIE LOCKRIDGE
IN PRO PER
P. O. Box 38637
Detroit, Michigan

JOSEPH R. PULEO P24672
Atty. for Crittenton Hospital
2301 W. Big Beaver
Suite 950
Troy, MI 48084
(313)649-6696

_____/

ORDER GRANTING MOTION FOR SUMMARY DISPOSITION AS TO DEFENDANT, CRITTENTON HOSPITAL, ONLY

At a regular session held in the City of Detroit, County of of Wayne, State of Michigan on FEB 9 1990

PRESENT: CLAUDIA HOUSE MORCOM
HONORABLE CLAUDIA HOUSE MORCOM

Upon Motion of Defendant, CRITTENTON HOSPITAL, having come on to be heard and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Defendant, CRITTENTON HOSPITAL, Motion for Summary Disposition is hereby granted in the above lawsuit.

IT IS FURTHER ORDERED that the above entitled cause of action be and the same is hereby dismissed and discontinued with prejudice and without costs as to Defendant, CRITTENTON HOSPITAL, only.

CLAUDIA HOUSE MORCOM
CIRCUIT COURT JUDGE

Illegible
Illegible, KILLEEN
CLERK

BY /s/ G E. Chung
DEPUTY CLERK

APPENDIX 6

Court of Appeals, State of Michigan

ORDER

Joseph B. Sullivan

Presiding Judge

Myron H. Wahls
Roman S. Gribbs

Judges

Allie Lockridge v A. Kambouris, M.D.

Docket # 139866
L. C. # 89-925730-NH

The Court orders that the application for delayed appeal is DENIED for lack of merit in the grounds presented.

/s/ Illegible

[seal] A true copy entered and certified by Daniel F. Walsh, Chief Clerk, on

JUL 08 1991 /s/ Daniel F. Walsh
Date Chief Clerk